

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

2:11-CV-283 JCM (GWF)

Plaintiff,

v.

IVY CAPITAL, INC., et al.,

Defendants.

ORDER

Presently before the court is the receiver's recommendation regarding living expenses as to Benjamin Hoskins, Leanne Hoskins, and Joshua Wickman. (Doc. #196), to which the FTC has filed an objection (doc. #199). Defendants have filed a brief in response to the FTC's objection (doc. #207) and a supplement in support of that brief (doc. #222).

Also before the court are the receiver's comments regarding legal expense budgets (doc. #200), to which the FTC has responded (doc. #205), and defendants Curva, LLC, Christopher M. Zelig, and Zyzac Commerce Solutions, Inc., have joined in that response (doc. #214). Defendants 3 Day MBA, LLC, Cherrytree Holdings, LLC, Fortune Learning System, LLC, Global Finance Group, LLC, John H. Harrison, Melyna Harrison, ICI Development, Inc., Ivy Capital, Inc., Ivy Capital, LLC, Kierston Kirschbaum, Kyle G. Kirschbaum, Logic Solutions, LLC, Steven E. Lyman, Tracy Lyman, Mowab, Inc., Oxford Debt Holdings, LLC, Revsynergy, LLC, S&T Time, LLC, Sell It Visions, LLC, Vianet, Inc., Virtual Profit, LLC, and Virtucon, LLC have responded to the FTC's objection (doc. #210). Defendants Fortune Learning, LLC, James Hanchett, Steven Sonnenberg, and The Shipper, LLC, have joined in that response (doc. #216), as have defendants Benjamin and

1 Leanne Hoskins (doc. #217).

2 **I. Recommendations Regarding Benjamin and Leanne Hoskins and Joshua Wickman**

3 In the original receiver's recommendation regarding living expenses (doc. #163), no
4 recommendations were made with respect to Benjamin and Leanne Hoskins or Joshua Wickman
5 because the receiver had not yet been provided with necessary information regarding their proposed
6 budgets. Generally, the receiver now recommends that the individual and relief defendants not be
7 permitted to access receivership defendants' funds to pay living expenses and that the release should
8 cover a period of four months, from April 21, 2011, to August 21, 2011.

9 (A) Hoskins

10 As to the Hoskins, the receiver has recommended a total release amount of \$76,674 for the
11 four months of the release period. Consistent with this court's amended order (doc. #186), the
12 receiver has limited transportation to one automobile and recommended a one-third reduction in food
13 expenses.

14 The FTC has objected to the receiver's recommendations, arguing that the lifestyles of the
15 defendants that the release will support are lavish. Defendants are free to pursue other employment
16 to earn legitimate income; the court should not allow them to maintain their lifestyles without
17 working. The FTC continues to more generally oppose the release of frozen funds, arguing instead
18 that the assets should be preserved to provide restitution to customers defrauded by the Ivy Capital
19 enterprise. This is especially true here, where the amount of consumer injury greatly exceeds the total
20 amount of frozen assets. If the court is inclined to release funds, the FTC proposes that the Hoskins
21 be limited to the request approved by the Lymans: \$8,099.92 per month. At its current rate, the
22 Hoskins would receive more than twice the amount received by the Lymans.

23 The Hoskins have responded to the FTC's comments, arguing that the court's approval of
24 "ordinary" living expenses should be determined on an individual basis, according to what is
25 "ordinary" for that particular defendant. Furthermore, no request has been made for loan payments
26 on multiple homes and cars, but rather on a single residence. Denying the release of the requested
27 funds to the Hoskins would be tantamount to requiring the Hoskins to walk away from their home
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1 and their children to switch schools based on unproven allegations.

2 Although the court is sympathetic to defendants' arguments, it is also cognizant of the public
3 interest to be vindicated in this case and the exorbitant amount of consumer loss. Accordingly, the
4 court declines to approve of the Hoskins' approximately \$22,000 per month excessive budget.
5 Rather, the court finds half of that amount, \$11,000 per month, reasonable.

6 As to the defendants' supplement, requesting \$6,960 for their child's surgery, the court is not
7 inclined to release those funds absent documentation from a medical provider confirming the
8 amounts. The court finds Leanne Hoskins' declaration, which purports to outline the projected costs,
9 insufficient for purposes of the release. Accordingly, the receiver's recommendation with regard to
10 the Hoskins is hereby overruled, and the Hoskins may receive \$11,000 per month absent justification
11 for additional expenditures.

12 (B) Wickman

13 The court approves Wickman's living expenses, noting nothing extravagant in his monthly
14 budget, save a car payment, which is being partially paid by his roommate. Accordingly, the
15 receiver's report with regard to defendant Wickman is hereby approved in its entirety.

16 **II. Release of Legal Expenses and Attorneys' Fees**

17 The receiver has recommended that the court deny the defendants' requests for the release
18 of funds to pay for legal expenses and attorneys' fees because each, save the budget of Green &
19 Associates, is incomplete. However, even as to Green & Associates, the receiver has recommended
20 denying the release because the budgets seemingly overestimate the costs needed to defend the case.
21 The FTC has agreed, and the receiver has recommended that the court hold a hearing to determine:
22 (1) the timing of any payments, (2) how to verify the actual fees submitted, and (3) the source of the
23 payments.

24 The court agrees that the above-mentioned logistical issues regarding the allocation of legal
25 expense funds need to be resolved before the court begins to release such funds. Accordingly, the
26 court requests a proposal from the receiver detailing the receiver's recommendations regarding the
27 timing of the payments, a procedure for verifying the fees submitted, and the source of such
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1 payments. The court also requests more detailed budgets from the law firms before any funds shall
2 be released.

3 Accordingly,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the receiver's
5 recommendation (doc. #196) be, and the same hereby is, DENIED with regard to the Hoskins and
6 GRANTED with regard to Wickman;

7 IT IS FURTHER ORDERED that the receiver's recommendation (doc. #200) regarding legal
8 budgets be, and the same hereby is, AFFIRMED;

9 IT IS FURTHER ORDERED that the receiver shall submit an additional recommendation
10 regarding the issues cited in section II of this order.

11 DATED August 12, 2011.

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14 **UNITED STATES DISTRICT JUDGE**